

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALI MOHAMMED SAIED AHMED;
AMANDA MAE THOMPSON;
BABAK MOSTAFAVINASSAB;
DEBRA ANN YOST; and LIONEL
GONZALES,

Plaintiffs,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

C14-926 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Defendant's motion to dismiss, docket no. 17, is GRANTED in part with prejudice, GRANTED in part without prejudice, and STRICKEN in part as follows:

(a) With regard to Counts I through IV of the Amended Complaint, defendant's Rule 12(b)(1) motion is GRANTED, and defendant's alternative Rule 12(b)(6) motion is STRICKEN as moot. Counts I through IV of the Amended Complaint, docket no. 11, are DISMISSED with prejudice for lack of jurisdiction. *See* 42 U.S.C. §§ 405(h) & 1383(c)(3); *Weinberger v. Salfi*, 422 U.S. 749, 760-61 (1975); *see also* 5 U.S.C. § 701(a)(1); *Mich. Ass'n of Homes & Servs. for the Aging, Inc. v. Shalala*, 127 F.3d 496, 499 (6th Cir. 1997) (citing *Heckler v. Ringer*, 466 U.S. 602, 622 (1984)).

(b) With regard to Count V of the Amended Complaint, defendant's Rule 12(b)(1) motion is GRANTED without prejudice. At the time this action was commenced, no "final decision" had been issued by defendant Carolyn W. Colvin, Acting Commissioner of the Social Security Administration ("Commissioner"), with respect to any plaintiff's applications for social security disability insurance

benefits and supplemental security income (“SSI”) payments under Titles II and XVI, respectively, of the Social Security Act. Plaintiff Ali Mohammed Saied Ahmed successfully sought review by the Appeals Council and his matter has been remanded to Administrative Law Judge (“ALJ”) Tom Morris for further proceedings. Plaintiff Lionel Gonzales’s request for review is still before the Appeals Council. Neither Ahmed’s nor Gonzales’s claims under Count V, which are brought under 42 U.S.C. §§ 405(g) & 1383(c)(3), are ripe. Unlike in *Johnson v. Shalala*, 2 F.3d 918 (9th Cir. 1993), and other cases in which exhaustion of administrative remedies has been excused, in this case, plaintiffs do not challenge an unlawful regulation, policy, or systemic practice, but rather the ability of a single ALJ to be fair. Instead of being collateral, plaintiffs’ claims of bias are “bound up with,” *see id.* at 922, the merits of their claims for disability and SSI benefits, and the risk of not succeeding on a bias claim before the agency does not render the effort futile. Ahmed’s and Gonzales’s claims under Count V are DISMISSED without prejudice for failure to exhaust. *See Kildare v. Saenz*, 325 F.3d 1078 (9th Cir. 2003). Plaintiffs Babak Mostafavinassab and Debra Ann Yost have now received “final decisions” from the Commissioner and have each commenced a new action, *see* Case Nos. C15-1280 and C15-1279. Their claims under Count V in this matter are likewise DISMISSED without prejudice, and they may proceed forward in their recently filed cases. According to counsel, a “final decision” has been issued with respect to plaintiff Amanda Mae Thompson, but she has not initiated a separate action and the operative pleading does not contain the allegations necessary to establish the Court’s jurisdiction. As to Thompson, the Amended Complaint is DISMISSED without prejudice and with leave to amend.

(c) As to Ahmed, Gonzales, Mostafavinassab, and Yost, defendant’s alternative Rule 12(b)(6) motion to dismiss Count V of the Amended Complaint is STRICKEN as moot. With respect to Thompson, defendant’s Rule 12(b)(6) motion is STRICKEN without prejudice to renewing the motion after Thompson files an amended pleading. Any such Second Amended Complaint shall be electronically filed within fourteen (14) days of the date of this Minute Order.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 21st day of August, 2015.

William M. McCool
Clerk

s/Karen Dews
Deputy Clerk